
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2015 No.

The Environmental Regulation (Enforcement Measures) (Scotland) Order 2015

PART 1

Introduction

Citation and commencement

1. This Order may be cited as the Environmental Regulation (Enforcement Measures) (Scotland) Order 2015 and comes into force on the day after the day on which it is made.

Interpretation

2.—(1) In this Order—

“the Act” means the Regulatory Reform (Scotland) Act 2014;

“certificate of non-compliance” has the meaning given in paragraph 4(2) of Schedule 3;

“costs recovery notice” has the meaning given in paragraph 9(1) of Schedule 2;

“enforcement measure” has the meaning given in article 9(5);

“enforcement undertaking” has the meaning given in paragraph 1(3) of Schedule 3;

“fixed monetary penalty” has the meaning given in paragraph 1(3) of Schedule 1;

“late payment interest” has the meaning given in paragraph 18(1) of Schedule 2; and

“late payment penalty” has the meaning given in paragraph 10 of Schedule 1;

“non-compliance penalty” has the meaning given in paragraph 14(2) of Schedule 2;

“notice of intent”—

(a) in relation to a fixed monetary penalty, has the meaning given in paragraph 4(1) of Schedule 1; and

(b) in relation to a variable monetary penalty, has the meaning given in paragraph 3(1) of Schedule 2;

“relevant offence”—

(a) in relation to a fixed monetary penalty, has the meaning given in paragraph 2 of Schedule 1;

(b) in relation to a variable monetary penalty, has the meaning given in paragraph 2 of Schedule 2; and

(c) in relation to an enforcement undertaking, has the meaning given in paragraph 2 of Schedule 3;

“variable monetary penalty” has the meaning given in paragraph 1(3) of Schedule 2;

“VMP undertaking” has the meaning given in paragraph 12(2) of Schedule 2.

(2) Where anything under this Order is to be done “in writing” that includes an electronic communication, as defined in section 15(1) of the Electronic Communications Act 2000⁽¹⁾, which is capable of being reproduced (and “written” is to be construed accordingly).

PART 2

Enforcement measures

The enforcement measures

3.—(1) Schedule 1 makes provision for and about the imposition by SEPA of a fixed monetary penalty on a person in relation to a relevant offence.

(2) Schedule 2 makes provision for and about the imposition by SEPA of a variable monetary penalty on a person in relation to a relevant offence.

(3) Schedule 3 makes provision for and about enabling SEPA to accept an enforcement undertaking from a person in a case where SEPA has reasonable grounds to suspect that the person has committed a relevant offence.

Combination of sanctions

4.—(1) SEPA may not impose a fixed monetary penalty on a person in relation to an offence constituted by an act or omission if a fixed monetary penalty has already been imposed on that person in respect of the same offence constituted by the same act or omission.

(2) SEPA may not impose a variable monetary penalty on a person in relation to an offence constituted by an act or omission if a variable monetary penalty has already been imposed on that person in respect of the same offence constituted by the same act or omission.

(3) SEPA may not serve a notice of intent relating to a fixed monetary penalty on a person in relation to any act or omission where a variable monetary penalty has been imposed on that person in relation to the act or omission.

(4) SEPA may not serve a notice of intent relating to a variable monetary penalty on a person in relation to any act or omission where a fixed monetary penalty has been imposed on the person in relation to the act or omission.

(5) Where a fixed monetary penalty is imposed on a person, SEPA may not impose a variable monetary penalty on the person in respect of the act or omission giving rise to the penalty.

(6) Where a variable monetary penalty is imposed on a person, SEPA may not impose a fixed monetary penalty on the person in respect of the act or omission giving rise to the penalty.

(7) SEPA may not impose on a person a fixed monetary penalty or variable monetary penalty in respect of an offence constituted by an act or omission if, in respect of that offence as constituted by that act or omission—

- (a) criminal proceedings have been commenced against the person;
- (b) the person has been given a warning by the procurator fiscal;
- (c) the person has been sent a conditional offer (within the meaning of section 302 of the Criminal Procedure (Scotland) Act 1995 (fixed penalty: conditional offer by procurator fiscal)⁽²⁾;

⁽¹⁾ 2000 c.7. Section 15 was amended by paragraph 158 of Schedule 17 to the Communications Act 2003 (c.21).

⁽²⁾ 1995 c.46. Section 302 was amended by section 50(1) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6) (“the 2007 Act”) and section 70(3) of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13) (“the 2010 Act”).

- (d) the person has accepted, or is deemed to have accepted, a compensation offer issued under section 302A of that Act (compensation offer by procurator fiscal)(3);
- (e) the person has accepted, or is deemed to have accepted, a combined offer issued under section 302B of that Act (combined fixed penalty and compensation offer)(4); or
- (f) a work order has been made against the person under section 303ZA of that Act (work orders)(5).

PART 3

Administration and Enforcement

Recovery of payments

5.—(1) SEPA may recover as a civil debt any—

- (a) fixed monetary penalty;
- (b) variable monetary penalty;
- (c) non-compliance penalty;
- (d) costs required to be paid under a costs recovery notice;
- (e) late payment interest; or
- (f) late payment penalty.

(2) The amount is recoverable as if it were payable under an extract registered decree arbitral bearing a warrant for execution issued by a sheriff of any sheriffdom.

Withdrawal of notice etc.

6. SEPA may by notice at any time—

- (a) withdraw a fixed monetary penalty notice; or
- (b) withdraw a variable monetary penalty notice, a non-compliance penalty notice or a costs recovery notice or reduce the amount specified in the notice.

Appeals

7.—(1) This article applies to any appeal under this Order.

(2) An appeal is to the Scottish Land Court(6).

(3) An appeal shall be in such form as may be prescribed from time to time by the Scottish Land Court.

(4) In any appeal where the commission of an offence is an issue requiring determination, SEPA must prove the offence according to the balance of probabilities.

(5) The Scottish Land Court may determine a case, or any part of a case, on the basis of written submissions and without a hearing where—

- (a) both parties agree; or

(3) Section 302A was added by section 50(2) of the 2007 Act and amended by section 70(4) of the 2010 Act.

(4) Section 302B was added by section 50(2) of the 2007 Act.

(5) Section 302ZA was added by section 51 of the 2007 Act and amended by section 70(5) of the 2007 Act.

(6) The Scottish Land Court was established by section 3 of the Small Landholders (Scotland) Act 1911, and continued in being under section 1 of the Scottish Land Court Act 1993 (c.45).

(b) subject to paragraph (6), the Court considers that it can justly determine the matter without a hearing.

(6) Where paragraph (5)(b) applies, the Court must not determine the appeal without a hearing without first giving the parties notice of its intention to do so, and an opportunity to make written representations as to whether there should be a hearing.

Powers of the Court

8.—(1) On an appeal under paragraph 8(1) of Schedule 1 (fixed monetary penalties) the Court may quash or confirm the penalty.

(2) On an appeal under paragraph 7(1) (variable monetary penalties), 10(1) (costs recovery notices) or 15(1) (non-compliance penalties) of Schedule 2, the Court may do one or more of the following:—

- (a) quash, confirm or vary the penalty, requirement or notice (in whole or in part);
- (b) take such steps as SEPA could take under this Order in relation to the act or omission giving rise to the penalty, requirement or notice; or
- (c) remit the matter, or any aspect of it, to SEPA for further consideration.

(3) On an appeal under paragraph 6(1) of Schedule 3 (certificates of non-compliance), the Court may quash or confirm the certificate.

(4) Subject to paragraphs (5) and (6), on an appeal under this Order the Scottish Land Court may not make an order in respect of expenses.

(5) The Court may make an order awarding expenses for the court fees paid or payable.

(6) The Court may make an order in respect of expenses where the Court considers that a party or their representatives has acted unreasonably in bringing, defending or conducting the proceedings.

Guidance

9.—(1) Where power is conferred on SEPA by this Order to impose an enforcement measure in relation to an offence, SEPA must publish guidance about—

- (a) how the offence is enforced;
- (b) the sanctions (including criminal sanctions) to which a person who commits the offence may be liable;
- (c) the action which SEPA may take to enforce the offence, whether by virtue of this Order or otherwise;
- (d) the circumstances in which SEPA is likely to take any such action;
- (e) SEPA's use of the enforcement measure; and
- (f) in the case of guidance relating to a fixed monetary penalty or variable monetary penalty, the guidance must contain the relevant information provided for in paragraph (2) or (3) as the case may be.

(2) In the case of guidance relating to a fixed monetary penalty, the relevant information referred to in paragraph (1)(f) is information as to—

- (a) the circumstances in which the penalty is likely to be imposed;
- (b) the circumstances in which it may not be imposed;
- (c) the amount of the penalty; and
- (d) rights to make representations and rights of appeal.

(3) In the case of guidance relating to a variable monetary penalty, the relevant information referred to in paragraph (1)(f) is information as to—

- (a) the circumstances in which the penalty is likely to be imposed;
- (b) the circumstances in which it may not be imposed;
- (c) the matters likely to be taken into account by SEPA in determining the amount of the penalty (including, where relevant, any discounts for voluntary reporting of non-compliance);
- (d) rights to make representations and rights of appeal; and
- (e) SEPA’s use of non-compliance penalties.

(4) SEPA must have regard to the guidance in exercising its functions.

(5) An “enforcement measure” means a fixed monetary penalty, variable monetary penalty or enforcement undertaking (and any references to the imposition of an enforcement measure include acceptance of an enforcement measure).

(6) In this article, any references to guidance include references to any guidance revised by virtue of section 31(8) of the Act.

Additional guidance

10.—(1) SEPA must publish guidance about how SEPA will use costs recovery notices, including information as to—

- (a) the circumstances in which they are likely to be used;
- (b) the circumstances in which they may not be used;
- (c) matters to be taken into account in establishing the amount involved; and
- (d) rights of appeal.

(2) SEPA must have regard to the guidance in exercising its functions.

Publication of enforcement action

11.—(1) SEPA must from time to time publish information about—

- (a) the number and type of cases in which fixed monetary penalties, variable monetary penalties, non-compliance penalties and costs recovery notices have been imposed; and
- (b) the number and type of cases in which a VMP undertaking or enforcement undertaking has been accepted by SEPA.

(2) Where SEPA—

- (a) imposes a fixed monetary penalty, variable monetary penalty or non-compliance penalty; or
- (b) accepts an enforcement undertaking or VMP undertaking,

SEPA may publish the final notice, non-compliance penalty notice or undertaking (as the case may be) in any manner SEPA thinks fit.

(3) In paragraph (1)(a) or (2)(a) the references to cases in which penalties have been imposed do not include cases where the penalty has been imposed but overturned on appeal.

Payment of penalties etc to the Scottish Ministers

12. Where, by virtue of this Order, SEPA receive any sum in respect of—

- (a) a fixed monetary penalty, a variable monetary penalty or a non-compliance penalty; or

(b) any interest or other financial penalty for late payment of such a penalty, SEPA must pay it to the Scottish Ministers.

PART 4

Consequential Amendments

Amendment of the Scottish Land Court Act 1993

13. In section 1(7) of the Scottish Land Court Act 1993(7) (determination by Court of Session of point of law), after “enactment” insert “, or under the Environmental Regulation (Enforcement Measures) (Scotland) Order 2015”.

Amendment of Fees Order

- 14.**—(1) The Scottish Land Court (Fees) Order 1996(8) is amended as follows.
- (2) At the end of article 3 insert “, subject to article 3A”.
- (3) After article 3 insert—

“Exemptions

3A. The fees specified under heading (3)(b) of the Table of Fees in the Schedule (miscellaneous; applications not otherwise specified) are not payable in respect of appeals made under the Environmental Regulation (Enforcement Measures) (Scotland) Order 2015.”.

St Andrew’s House,
Edinburgh
Date

Name
Authorised to sign by the Scottish Ministers

(7) [1993 c.45](#). Section 1(7) was amended by the Land Reform (Scotland) Act 2003 ([asp 2](#)), section 97(2) and the Nature Conservation (Scotland) Act 2004 ([asp 6](#)), Schedule 7, paragraph 9.

(8) [S.I. 1996/680](#).